



New South Wales

Building and Other Fair Trading Legislation Amendment Act 2022 No 61

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Building and Other Fair Trading Legislation Amendment Act 2022 No 61

Act No 61, 2022

An Act to make miscellaneous amendments to building legislation and other legislation administered by the Minister for Fair Trading. [Assented to 14 November 2022]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Building and Other Fair Trading Legislation Amendment Act 2022*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of building and other Fair Trading legislation

1.1 Design and Building Practitioners Act 2020 No 7

Section 98A

Insert after section 98—

98A Register of orders and undertakings

- (1) The Secretary must keep the following information in a register and make the information publicly available—
 - (a) copies of all stop work orders in force,
 - (b) other information prescribed by the regulations.
- (2) The Secretary may include the following information in the register and make some or all of the information publicly available—
 - (a) copies of written undertakings accepted under section 88,
 - (b) information related to the undertakings.
- (3) In this section—

publicly available means publicly available for inspection free of charge by the public on the Department’s website.

1.2 Explosives Act 2003 No 39

[1] Sections 6(1), 7 and 8(1)

Omit “500 penalty units” wherever occurring in the penalty provisions.
Insert instead “700 penalty units”.

[2] Sections 6(1), 6A, 7 and 8(1)

Omit “250 penalty units” wherever occurring in the penalty provisions.
Insert instead “350 penalty units”.

[3] Sections 9(1), 15 and 18

Omit “50 penalty units” wherever occurring in the penalty provisions.
Insert instead “70 penalty units”.

[4] Section 23 Suspended and cancelled licences and security clearances

Omit “10 penalty units” from the penalty provision. Insert instead “15 penalty units”.

[5] Section 27 Extension of certain provisions of Work Health and Safety Act 2011 relating to inspectors and enforcement of this Act

Omit “Section 155 and Part 9 (Securing compliance), other than section 187, of the *Work Health and Safety Act 2011* applies” from section 27(1).
Insert instead “The *Work Health and Safety Act 2011*, Part 8, Division 2 and Part 9, other than section 187, apply”.

[6] Section 28 Offence of obstructing or intimidating inspectors

Omit the penalty provision. Insert instead—

Maximum penalty—

- (a) for a corporation—1,050 penalty units, or
- (b) for an individual—315 penalty units.

[7] Section 35 Disclosure of information

Omit “5 penalty units” from section 35(1), penalty provision.

Insert instead “7 penalty units”.

[8] Section 36 Regulations

Insert before section 36(2)(a)(i)—

- (iaa) the registration of explosives as authorised explosives, including keeping and publishing a register of authorised explosives,
- (iab) prohibiting the use of unauthorised explosives,

[9] Section 36(2)(a)(iia)

Insert after section 36(2)(a)(ii)—

- (iia) safety and security measures relating to explosives and explosive precursors, including storage,

[10] Section 36(2)(a1)

Insert after section 36(2)(a)—

- (a1) the transport of explosives and explosive precursors, including by regulating, restricting or prohibiting the transport of explosives and explosive precursors in particular areas,

[11] Section 36(2)(d1)

Insert after section 36(2)(d)—

- (d1) the functions and powers of inspectors, including—
 - (i) giving directions to persons, and
 - (ii) requiring persons to provide information or documents,

[12] Section 36(3)

Omit “250 penalty units”. Insert instead “350 penalty units”.

1.3 Home Building Act 1989 No 147

Section 33A Disqualification from holding authorities

Insert after section 33A(1)—

- (1A) The Secretary may determine that an individual, or a body corporate or partnership with which the individual is associated, is disqualified from holding an authority, other than an owner-builder permit, if satisfied that the individual has previously engaged in conduct that led to a disqualification of another person.
- (1B) The Secretary may disqualify a person from holding an authority under subsection (1A) permanently or for a specified period of time.

1.4 Land and Environment Court Act 1979 No 204

Section 20 Class 4—environmental planning and protection, development contract and strata renewal plan civil enforcement

Omit “section 84” from section 20(1)(de). Insert instead “section 91”.

1.5 Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 No 9

[1] Section 7 Notification to Secretary of intended completion of building work

Omit “1,000 penalty units”, “100 penalty units”, “200 penalty units” and “20 penalty units” from the penalty.

Insert instead “3,000 penalty units”, “300 penalty units”, “1,000 penalty units” and “100 penalty units”, respectively.

[2] Section 28 Undertakings

Insert after section 28(2A)—

- (2B) A person may carry out work without consent or approval under the *Environmental Planning and Assessment Act 1979* if the work is carried out—
- (a) to eliminate, minimise or remediate a serious defect, or a potential serious defect, in a residential apartment building, and
 - (b) in compliance with a requirement of an undertaking accepted by the Secretary.

[3] Section 33 Power to order rectification

Omit section 33(2). Insert instead—

- (2) A building work rectification order may require the developer in relation to building work to do one or more of the following to eliminate, minimise or remediate the serious defect—
- (a) ensure specified building work is carried out or not carried out,
 - (b) take other action specified in the order.

[4] Section 34 Order may specify standards and building work that will satisfy those standards

Omit “in the order the building work” from section 34(1).

Insert instead “in the order building work”.

[5] Section 34(1A)

Insert after section 34(1)—

- (1A) If the building work rectification order specifies the standard that building work is required to meet, the order may require the developer to—
- (a) submit particulars of the work the person intends to carry out to meet the standard, or
 - (b) engage a suitably qualified person or specialist to prepare a report on how the standard will be met.

[6] Section 62

Omit the section. Insert instead—

62 Register of orders and undertakings

- (1) The Secretary must keep the following information in a register and make the information publicly available—
 - (a) copies of all prohibition orders, building work rectification orders and stop work orders in force,
 - (b) other information prescribed by the regulations.
- (2) The Secretary may include the following information in the register and make some or all of the information publicly available—
 - (a) copies of written undertakings accepted under section 28,
 - (b) information related to the undertakings.
- (3) In this section—

publicly available means publicly available for inspection free of charge by the public on the Department’s website.

[7] Section 65 Exchange of information

Insert after section 65(6)—

- (6A) To avoid doubt, information is *held* by a person or agency for this section if the person or agency has access to the information.

Example— Information on the NSW planning portal to which the Secretary has access.

[8] Section 65(7), definition of “relevant agency”, paragraph (a) and (a1)

Omit paragraph (a). Insert instead—

- (a) a government sector agency within the meaning of the *Government Sector Employment Act 2013*,
- (a1) a local council,

[9] Section 65A

Insert after section 65—

65A Giving information to Australian universities for research purposes

- (1) The Secretary may give information, other than personal information, to—
 - (a) an Australian university, or
 - (b) a consultant or contractor engaged by or on behalf of the Secretary.
- (2) Information may only be given under this section—
 - (a) to assist the conduct of research into, or the carrying out of analysis of, a matter regulated by this Act, or
 - (b) to assist the Secretary in exercising the Secretary’s functions under this Act.
- (3) In this section—

Australian university has the same meaning as in the *Higher Education Act 2001*.

information includes information—
 - (a) held by the Secretary or the Department, or
 - (b) provided under a requirement of this Act.

personal information has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.

[10] Schedule 1 Savings, transitional and other provisions

Insert after Part 3—

Part 4 Provision consequent on enactment of the Building and Other Fair Trading Legislation Amendment Act 2022

6 Application of amendments

Sections 28, 33, 34 and 62, as amended or substituted by the *Building and Other Fair Trading Legislation Amendment Act 2022*, extend to an undertaking accepted, or an order given, before the commencement of the amendment or substitution.

1.6 Strata Schemes Management Act 2015 No 50

Part 11, Division 3AA

Insert after Division 3—

Division 3AA Decennial insurance

211AA Decennial insurance

(1) Division 3 does not apply to a developer of a strata scheme who satisfies the Secretary that the developer has, for building work to which this Part applies, obtained decennial insurance in a form acceptable to the Secretary.

(2) In this section—

building element has the same meaning as in the *Design and Building Practitioners Act 2020*.

decennial insurance means insurance, complying with criteria prescribed by the regulations, that—

- (a) is taken out by the developer of a strata scheme in favour of the owners corporation for the scheme, and
- (b) insures against serious defects in the building elements of the common property for 1 or more buildings in the scheme—
 - (i) for 10 years, and
 - (ii) on a strict liability basis.

serious defect has the same meaning as in the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

1.7 Subordinate Legislation Act 1989 No 146

Schedule 5 Further postponement of repeal of statutory rules

Insert at the end of the Schedule, with appropriate clause numbering—

Postponement of repeal of Explosives Regulation 2013

The *Explosives Regulation 2013* remains in force until 1 September 2024, unless sooner repealed.

[Second reading speech made in—
Legislative Assembly on 12 October 2022
Legislative Council on 20 October 2022]